

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 6548 of 1999****For Approval and Signature:****HON'BLE MR JUSTICE KS JHAVERI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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GUJARAT SHEEP & WOOL DEVELOPMENT CORPORATION LTD., - Petitioner(s)
Versus
JASDAN SHEEP BREEDING FARM - Respondent(s)

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Appearance :

MR PV HATHI for Petitioner No(s).: 1.

MR TR MISHRA for Respondent No(s).: 1 - 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 20/07/2005**ORAL JUDGMENT**

1.0 The petitioner Corporation has challenged the award dated 25.05.1999 passed by the Labour Court, Rajkot in

Reference (LCR) No.365 of 1989, whereby the said reference was allowed.

2.0 The petitioner Corporation is established with a view to breed sheeps and help the wool industry in the State. For undertaking the task of sheep breeding, the Corporation is required to employ persons depending upon the availability of work. It is the case of the petitioner that the respondent was employed on daily wages as per the requirement of the petitioner. The respondent was terminated from the service w.e.f. 01.08.1988.

2.1 Being aggrieved by the said order, the respondent raised a dispute, which, ultimately, culminated into a reference. The Labour Court, after hearing the parties, directed the petitioner to reinstate the respondent with continuity of service and 10 per cent back wages. Hence, this petition.

3.0 While admitting the matter on 28.04.2000, this Court had stayed the operation of the impugned award qua back wages alone, on condition that the petitioner reinstates the respondent workman w.e.f. 25.05.1999 and shall also

pay full wages for the period from 25.05.1999 till the date of actual reinstatement in service. It is stated that pursuant to the above order of this Court, the respondent is already reinstated in service w.e.f. 25.05.1999. Therefore, the question which is now required to be considered by this Court is with regard to grant of 10 per cent back wages.

4.0 Mr.P V Hathi learned advocate for the petitioner has contended that the respondent was employed as a daily wager only and that the said fact is also clear from his examination before the Labour Court. He has submitted that even in the statement of claim, which has been reproduced by the Labour Court, the said fact is established. Therefore, the Labour Court has committed an error in granting continuity of service and 10 per cent back wages.

5.0 I have heard learned counsel for the parties and perused the documents placed on record. In the impugned award the Labour Court has not given any cogent reasons as to on what basis it has awarded 10 per cent back wages to the respondent. Moreover, in view of the decision of the Apex Court in the case of General Manager, Haryana

Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C. pg.137, wherein it has been held that an order for payment of back wages should not be passed in a mechanical manner, but a host of factors are to be taken into consideration before passing any such order, the order awarding back wages is required to be quashed and set aside.

6.0 In above view of the matter, the impugned award of the Labour Court is modified to the extent that the direction qua granting reinstatement with continuity of service is confirmed; and the direction qua awarding 10 per cent back wages is quashed and set aside. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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